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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DARREL STEWART,

10 Plaintiff,

11 v.

12 HENRY RICHARDS, *et al.*,

13 Defendants.

Case No. C08-5275 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom. Dkt. 24. The Court has reviewed the Report and Recommendation, Objections to the Report and Recommendation, and the remaining record.

Plaintiff alleges in this 42 U.S.C. § 1983 case that the Special Commitment Center for Sexual Violent Predators' (SCC) Policy 208 violates his First Amendment rights. Dkt. 1. Policy 208 describes sexually explicit and related material, and restricts residents of the SCC from having access to such materials. Dkt. 16-5, at 1. The specific materials at issue and other pertinent facts appear in the Report and Recommendation and shall not be repeated here. This order will address Plaintiff's objections to the Report and Recommendation.

Plaintiff first argues in his objections that Defendants made no showing that he would "be effected by reading any book that the Defendants claim is barred because it contains "youthful

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1 characters and/juvenile themes.”” Dkt. 25, at 1-2. Plaintiff does not deny that he has been convicted
2 of crimes involving children. “As is the case with prisoners, civilly committed persons retain those
3 First Amendment rights not inherently inconsistent with the circumstances of their detention.”
4 *Hydrick v. Hunter*, 500 F.3d 978, 992 (9th Cir. 2007)(considering whether sexually violent predators
5 had a First Amendment right to not participate in treatment). Defendants have adequately shown
6 that as his prior convictions relate to violent crimes with children, and it would be “inconsistent with
7 the circumstances of [his] detention” to allow Plaintiff to possess the materials relating to children.
8 *Hydrick*, at 992. Moreover, Defendants have adequately shown that the contents of the third book,
9 which was not a children’s book, would be “inconsistent with the circumstances of [his] detention.”
10 *Hydrick*, at 992. Defendants pointed out that the book was inappropriate as it focused on the tools
11 and psychology of law enforcement “police procedurals” which can be used by residents to avoid
12 consequences for antisocial behavior. Dkt. 16, at 4.

13 Plaintiff argues that the Report and Recommendation uses an inappropriate standard in
14 reviewing his claim as he is not a prisoner, but an involuntarily committed individual. Dkt. 25, at 2.
15 Specifically, Plaintiff argues that the standard announced in *Pell v. Procunier*, 417 U.S. 817 (1974) is
16 inappropriate. The Report and Recommendation cites *Pell* for the proposition that “[c]hallenges to
17 prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of
18 the legitimate policies and goals of the corrections system.” Dkt. 24, at 6. The Report and
19 Recommendation clearly states that Plaintiff is not a prisoner. *Id.* It is undisputed that the SCC is
20 not a prison, but an institution that confines those who have been found to be sexually violent
21 predators pursuant to the state statute. *Id.* “The law generally requires a careful balancing of the
22 rights of individuals who are detained for treatment, not punishment, against the state's interests in
23 institutional security and the safety of those housed at the facility.” *Hydrick*, at 990. In weighing
24 those interests, it cannot be ignored that, unlike those who are civilly committed because of mental
25 infirmities, sexually violent predators have been civilly committed subsequent to criminal convictions
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1 and have been adjudged to pose a danger to the health and safety of others. *Id.* “As a result, the
2 rights of [sexually violent predators] may not necessarily be coextensive with those of all other
3 civilly detained persons.” *Id.* In light of the unique nature of the SCC, the Report and
4 Recommendation examines Plaintiff’s claims that his First Amendment right to these reading
5 materials was violated using both the standard for a prisoners and those committed in a state mental
6 hospital. Dkt. 24, at 6-9. The Report and Recommendation notes that in cases of involuntarily
7 committed individuals at state mental hospitals, treatment decisions made by professionals are
8 presumed valid. *Id.* (*citing Youngberg v. Romeo*, 457 U.S. 307 (1982)). Plaintiff fails to
9 acknowledge that the decisions he challenges were made by professionals in the context of his
10 treatment as a sexually violent predator. In *Youngberg*, the mother of an involuntarily committed
11 person with mental retardation challenged his conditions of confinement as being unconstitutional.
12 *Id.* Recognizing the need to show deference to the judgment exercised by a qualified professional
13 regarding mental health treatment, the *Youngberg* Court held that a “decision, if made by a
14 professional, is presumptively valid; liability may be imposed only when the decision by the
15 professional is such a substantial departure from accepted professional judgment, practice, or
16 standards as to demonstrate that the person responsible actually did not base the decision on such a
17 judgment.” *Id.*, at 323. The Report and Recommendation points out that Defendants have provided
18 evidence that in their professional opinion, these reading materials are counter to Plaintiff’s treatment
19 and to the overall treatment environment at the SCC. Plaintiff offers no evidence, other than his own
20 assertions to counter this evidence. This objection is without merit.

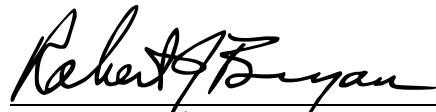
21 Plaintiff argues that the Defendants’ judgment was not sound and that the judgment might
22 vary based upon the treatment professional. Dkt. 25. Plaintiff provides no evidence to support his
23 argument. *Id.* Plaintiff’s attacks on the qualifications of the professionals here are also without
24 merit. The *Youngberg* Court defined “professional” as a “person competent, whether by education,
25 training or experience, to make the particular decision at issue.” *Id.* at 323, n 30. For example, the
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1 Court stated for a person with mental retardation who is involuntarily confined, “[l]ong-term
2 treatment decisions normally should be made by persons with degrees in medicine or nursing, or with
3 appropriate training in areas such as psychology, physical therapy, or the care and training of the
4 retarded.” *Id.* Plaintiff fails to show the treatment professionals here were not “competent, whether
5 by education, training or experience,” to make the decisions at issue here.

6 Accordingly, the Court does hereby find and **ORDER**:

- 7 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 24);
8 (2) Plaintiff’s Complaint is **DISMISSED WITH PREJUDICE**; and
9 (3) The Clerk is directed to send copies of this Order to plaintiff, and to the Hon. Karen
10 L. Strombom.

11 DATED this 20th day of October, 2008.

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13 ROBERT J. BRYAN
14 United States District Judge

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